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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,779	07/19/2004	Jonathan A Clark	36-1831	6587
23117 7590 11/17/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
AILES, BENJAMIN A				
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2442				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,779

Applicant(s)

CLARK ET AL.

Examiner

BENJAMIN AILES

Art Unit

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/CI/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to correspondence filed 15 September 2009.
2. Claims 48-65 remain pending.

Response to Amendment

3. Applicant's amendment to the specification with respect to a spelling error has been entered into the record.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 48-53, 57, 59-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Rollins (US 6,738,348 B1).
6. With respect to claim 48, Rollins discloses a telecommunications connection process for a bandwidth-on-demand network (Rollins: Col 1, lines 6-7 and lines 12-13), wherein an application server controls use of a specified application for delivering data to a user on request (Rollins: Fig. 1, Col 2, lines 24-31, wherein an application server, e.g., a network service provider subsystem or NSP, component 12 in Fig. 1, controls the use of specified application, e.g., a user request to a network provider and the corresponding response from network provider, and records calls made on the network

using that application, e.g., provides access in response to the calls), and wherein connections are made available at a first bandwidth and one or more higher bandwidths (Rollins: Col 1, lines 46-50), wherein a billing process is applied to connections established at the higher bandwidths but not at the first bandwidth (Rollins: Col 2, line 56 and lines 61-63, a surcharge rate), to generate a billing output, and,

wherein the billing process records connections established on the network (Rollins: Col 4, lines 31-36), and also records calls which of those connections make use of the specified application (Rollins: Col 2, lines 45-48 and Col 3, lines 8-11, describe an output, e.g., a charge, is generated according to connections, e.g. increased use of bandwidth, to receive the application of ISP, Col 2, line 29; col. 2, line 65 – col. 3, line 14, use of a specific application at an increased bandwidth allocation).

7. With respect to claim 49, Rollins discloses wherein the output is a charge to be made for the use of the network (Rollins: Col 2, lines 45-48 and Col 3, lines 8-11, describe an output, e.g., a charge, is generated according to connections, e.g. increased use of bandwidth).

8. With respect to claim 50, Rollins discloses wherein a charge is also made to a second account when a connection is made making use of the said application server (Rollins: Col 5, lines 28-29 and lines 42-46, wherein a charge is made to a service provider for a surcharge).

9. With respect to claim 51, Rollins discloses wherein the charges to be made to the second account are determined by the information transmitted to the application server

by the end users (Rollins: Col 3, lines 3-5 and lines 8-10, describe the charge to be determined by information transmitted to the application server, e.g., NSP, by the end users).

10. With respect to claim 52, Rollins discloses wherein the application server logs the activities of the end users and the information provided by the end users to determine the output to be generated (Rollins: Col 2, lines 66-67 and Col 3, lines 1-11, wherein an application server, e.g., NSP, logs the activities, e.g., request, downloading and submission, and the information, e.g., the bandwidth and the application, wherein the operation of logging is included in the operations of establishing connections and determining the charge during the time of surcharge, as in Col 5, lines 28-30).

11. With respect to claim 53, Rollins discloses wherein the end users interact with the application server such that the application server can log the activities of the end users (Rollins: Col 2, lines 66-67, Col 3, lines 1-11, describe the information from end users and the operations, including logging and billing, by the application server).

12. With respect to claim 57, Rollins discloses a billing process for a bandwidth-on-demand network (Rollins: Col, lines 8-11), wherein a billing engine records connections established on the network (Rollins: Col 5, lines 38-46, describe different connections, wherein a billing system may be represented by a central office, component 18, and/or a network service provider subsystem, component 12, in Fig. 1), and an application server controlling use of a specified application for delivering data to a user on request, and also records calls made on the network using that application (Rollins: Fig. 1, lines

24-31, wherein an application server, e.g., a network service provider subsystem or NSP, component 12 in Fig. 1, controls the use of specified application, e.g., a user request to a network provider and the corresponding response from network provider, and records calls made on the network using that application, e.g., provides access in response to the calls), and instructs the billing engine which connections made use of that application (Rollins, Col 5, lines 28-33, describe a billing engine, e.g., a NSP or a central office, computes the charge according to the connection information about the use of bandwidth), and wherein such calls are charged by the billing engine at different rates according to whether those connections make use of that application (Rollins, Col 2, lines 59-65), wherein connections are made available at a first low-bandwidth connection (Rollins: Col 2, lines 36-42, imply the prior allocated bandwidth to be at a lower bandwidth), and the billing process is only applied to connections established at higher bandwidths (Rollins: Col 2, lines 61-65, wherein the billing process is based on the surcharge rate).

13. Regarding claim 59, Rollins discloses a process according to claim 57, wherein a charge is also made to a second account when a connection is made making use of the said application server (Rollins: Col 5, lines 28-29 and lines 42-46, wherein a charge is made to a service provider for a surcharge).

14. With respect to claim 60, Rollins discloses wherein the charges to be made to the second account are determined by the information transmitted to the application server by the end users (Rollins: Col 3, lines 3-5 and lines 8-10, describe the charge to be

determined by information transmitted to the application server, e.g., NSP , by the end users).

15. With respect to claim 61, Rollins discloses wherein the application server logs the activities of the end users and the information provided by the end users to determine the charges to be made to the second account (Rollins: Col 2, lines 66-67 and Col 3, lines 1-11, wherein an application server, e.g., NSP, logs the activities, e.g., request, downloading and submission, and the information, e.g., the bandwidth and the application, wherein the operation of logging is included in the operations of establishing connections and determining the charge during the time of surcharge, as in Col 5, lines 28-30).

16. With respect to claim 62, Rollins discloses wherein the end users interact with the central application server using programming information having security measures to allow the central server to log the activities of the end users (Rollins: Col 2, lines 25-30 and Col 4, lines 39-41, describe the end users interacts with the central application server, e.g., a network service provider, wherein the central application server decides the access, i.e., a security measure, and logs the activates, e.g., request of bandwidth and downloading).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be

patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 54-56, 63-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rollins, as applied to claims 48 and 57 above, in view of Kitze (US Pub. No. 2002/0194108 A1), and hereinafter Kitze.

19. Regarding claims 54 and 63, Rollins does not expressly disclose wherein the application server is a peer-to-peer file transfer controller. However, Kitze discloses wherein the application server is a peer-to-peer file transfer controller (Kitze: [0010], lines 1-4).

Nonetheless, the model of Rollins can be adapted to include the peer networks by connecting to the network service provider other clients or servers, for instance, and the network service provider subsystem can be used to transfer files (e.g., catalogs, Col 2, line 67). It would have been obvious for one of ordinary skill in the art at the time of invention to combine the teachings of Rollins with the teachings of Kitze by including the peer networks, because the bandwidth on demand model of Rollins can be applied to different networking embodiments, including the peer networks.

20. With respect to claims 55 and 64, the claims are rejected for the same reasons as claims 54 and 63 above. In addition, Rollins discloses wherein the controller has means for recording user inputs (Rollins, Col 4, lines 41-43), and Kitze discloses user inputs relating to the quality of files available for transfer (Kitze: [0011], lines 4-7).

21. With respect to claims 56 and 65, the claims are rejected for the same reason as in claims 55, and 64 above. In addition, Kitze discloses wherein the outputs are adjusted according to the rated quality of the information accessed (Kitze: [0023], lines 8-10).

22. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rollins, as applied to claim 57 above, in view of Bowman-Amuah (US Patent No. 6345239 B1), and hereinafter Bowman-Amuah.

23. With respect to claim 58, Rollins does not disclose wherein connections making use of the application are charged at a lower rate than other connections. However, Bauman-Amuah discloses wherein connections making use of the application are charged at a lower rate than other connections (Bowman-Amuah: e.g., Col 28, lines 52-53, wherein the lower rate is charged for promotion discount).

It would have been obvious for one of ordinary skill in the art at the time of invention to combine the teachings Rollins with the teachings of Bowman-Amuah by implementing the charge method according to the chosen services, because such a charge method may be useful to the bandwidth allocation under various service conditions.

Response to Arguments

24. Applicant's arguments filed 15 September 2009 have been fully considered but they are not persuasive.

25. With respect to independent claims 48 and 57 rejected under 102(e) in view of Rollins (6,738,348), applicant argues that the cited art does not teach (a) the idea of "charging different rates according to the application used by the connection," (b) "the billing process is only applied to connections made at higher bandwidths," and "billing process is applied to connections established at the higher bandwidth but not at the first bandwidth."

(a) With respect to the argument that the cited art does not teach "charging different rates according to the application used by the connection," the examiner respectfully disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "charging different rates according to the application used by the connection") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner maintains that Rollins teaches within the scope of the claim wherein the claim, specifically claim 48, requires the at least charging of at least one different rate wherein it is claimed that "connections are made available at a first bandwidth and one or more higher bandwidths..." It is submitted that Rollins teaches in column 2, line 66 – column 3, line 14 the usage of a specified application at a higher bandwidth rate wherein a client electronically transfers catalogs that require a larger bandwidth from a manufacturer. For this specified application the user may request an increase for the allocated bandwidth and for the time the bandwidth allocation was increased the user

will be billed accordingly. Therefore, Rollins is deemed to teach within the argued aspect of charging at a different rate based on an application used.

(b) With respect to the argument that the cited art does not teach "the billing process is only applied to connections made at higher bandwidths," and "billing process is applied to connections established at the higher bandwidth but not at the first bandwidth," the examiner respectfully disagrees. Rollins teaches in column 3, lines 8-14 wherein a surcharge is applied only when a higher bandwidth is requested by the client. For a time in which a bandwidth allocation is increased, a NSP or a central office may bill the user's account a surcharge based on the duration of the time the higher bandwidth was utilized. The surcharge method as taught by Rollins is deemed within the scope of applicant's claimed "the billing process is only applied to connections made at higher bandwidths" and "billing process is applied to connections established at the higher bandwidth but not at the first bandwidth."

Therefore, claims 48-65 are not deemed patentable over the cited prior art of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Ailes whose telephone number is (571)272-3899. The examiner can normally be reached Monday-Friday, IFP Hoteling schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Pwu can be reached on 571-272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. A. A./
Examiner, Art Unit 2442

/Benjamin R Bruckart/
Primary Examiner, Art Unit 2446